

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

**CIVIL MINUTES – GENERAL**

Case No. **5:18-cv-01880-JVS (MAA)** Date: **September 28, 2018**

Title **Elijah Lee Miller v. Unknown Defendant**

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Present: The Honorable: **MARIA A. AUDERO, U.S. Magistrate Judge**

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Joe Roper  
Deputy Clerk

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N/A  
Court Reporter / Recorder

Attorneys Present for Petitioner:  
N/A

Attorneys Present for Respondent:  
N/A

**Proceedings (In Chambers):      Order Re Complaint (ECF No. 1)**

On September 4, 2018, Plaintiff Elijah Lee Miller (“Plaintiff”), a prisoner in San Bernardino County, filed a civil rights complaint against unnamed Defendants. (“Complaint, ECF No. 1).

On September 24, 2019, Plaintiff submitted two separate Requests to Proceed without Prepayment of Filing Fees with Declaration in Support, each naming a different Defendant (Patricia A. Miller and Josef Daniel Miller). (“Requests,” ECF Nos. 5, 6.) However, Plaintiff cannot add Defendants to the lawsuit by way of the Requests.

In addition, the Complaint does not comply with Federal Rule of Civil Procedure Rule 8, which requires “a short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. Proc. 8(a)(2). “Each allegation must be simple, concise, and direct.” Fed. R. Civ. Proc. 8(d)(1).

For these reasons, pursuant to 28 U.S.C. § 1915(e)(2)(B), the Court DISMISSES the Complaint with LEAVE TO AMEND. If Plaintiff still wishes to pursue this action, he shall file a First Amended Complaint no later than thirty (30) days from the date of this Order, utilizing the standard civil rights complaint form (Form CV-066), a copy of which is attached.

In the First Amended Complaint, Plaintiff should identify the nature of each separate legal claim and make clear what specific factual allegations support each of his separate claims. Plaintiff strongly is encouraged to keep his statements concise and to omit irrelevant details. It is not necessary for Plaintiff to cite case law, include legal argument, or attach exhibits at this stage of the litigation. Plaintiff also is advised to omit any claims for which he lacks a sufficient factual basis.

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**Plaintiff explicitly is cautioned that failure to timely file a First Amended Complaint, or failure to correct the deficiencies described above, will result in a recommendation that this action, or portions thereof, be dismissed with prejudice for failure to prosecute and/or failure to comply with court orders pursuant to Federal Rule of Civil Procedure 41(b).**

If Plaintiff no longer wishes to pursue this action in its entirety or with respect to particular Defendants or claims, he voluntarily may dismiss all or any part of this action by filing a Notice of Dismissal in accordance with Federal Rule of Civil Procedure 41(a)(1). A form Notice of Dismissal (Form CV-09) is attached for Plaintiff's convenience.

Plaintiff is advised that this Court's determination herein that certain allegations in the Complaint are insufficient to state a particular claim should not be seen as dispositive of such claims. Accordingly, although the undersigned Magistrate Judge believes that Plaintiff has failed to plead sufficient factual matter in the pleading, accepted as true, to state a claim for relief that is plausible on its face, Plaintiff is not required to omit any claim or defendant in order to pursue this action. However, if Plaintiff decides to pursue a claim in an amended complaint that the undersigned previously found to be insufficient, then pursuant to 28 U.S.C. § 636, the undersigned ultimately may submit to the assigned District Judge a recommendation that such claim may be dismissed with prejudice for failure to state a claim, subject to Plaintiff's right at that time to file objections. *See* Fed. R. Civ. P. 72(b); C.D. Cal. L.R. 72-3.

The Clerk is directed to send Plaintiff copies of: (1) Form CV-066 for filing federal civil rights complaints and the accompanying instructions, and (2) Form CV-09 for voluntarily dismissing claims under Federal Rule of Civil Procedure 41.

It is so ordered.

**Initials of Preparer**

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